IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

RCRev..No. 252 of 2007()

RCA.27/2001 of II ADDL. DISTRICT COURT, TRIVANDRUM
RCP.33/1999 of I ADDL.M.C.,TRIVANDRUM
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REVISION PETITIONERS/APPELLANT/COUNTER PETITIONER:
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1. P. KAMALAMMA,
GEETHA TRADERS, CHOORAKATTUPALAYAM, CHENTHITTA,
THIRUVANANTHAPURAM, RESIDING AT GEETHANJALI,
CHENGALLUR ROAD, POOJAPPURA, THIRUVANANTHAPURAM.
(DIED ON 08-11-2006).

2. GEETHA G. NAIR, D/O.LATE P.KAMALAMMA,
GEETHA TRADERS, CHOORAKATTUPALAYAM, CHENTHITTA,
THIRUVANANTHAPURAM, RESIDING AT GEETHANJALI,
CHENGALLUR ROAD, POOJAPPURA, THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

RESPONDENT: RESPONDENT/PETITIONER:

V. ARUNACHALAM PILLAI,
VIGNESWAR, VADAKEVILA, BALARAMAPURAM,
THIRUVANANTHAPURAM.

BY ADV.SRI.G.S.REGHUNATH

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. BALAKRISHNAN NAIR &

K.T.SANKARAN, JJ.

R.C.R. No. 252 of 2007

Dated 1st August, 2007.

ORDER

Sankaran, J.

The petitioner challenges the concurrent findings of the Rent Control Court and the Appellate Authority. The Rent Control Petition was filed by the landlord under Sections 11(2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act").

2. The building was entrusted to the tenant on 4.7.1984, on a monthly rent of Rs.300/-. The rent was being enhanced from time to time and it was fixed at Rs.650/- per month. Later, after the issuance of the notice by the landlord demanding enhanced rate of rent, the tenant is paying Rs.750/- per month. The landlord contended that the rent was in arrears and that he is entitled to get an order of eviction under Section 11(2)(b) of the Act. This ground no longer survives, since the entire arrears of rent have been paid by the tenant. The bona

fide need put forward by the landlord was that the building is required for the bona fide occupation of his wife to conduct a Readymade Garments Shop.

3. The tenant disputed the bona fide need put forward by the landlord. It was contended that the landlord was attempting to get eviction by using pressure tactics and by demanding rent at an enhanced rate every now and then. The tenant further contended that the bona fide need put forward by the landlord is only a ruse to evict her. She also contended that she is entitled to the benefit of the second proviso to Section 11(3) of the Act. She is depending for her livelihood mainly on the income derived from the business conducted in the premises and there are no other suitable building available in the locality to accommodate the business conducted by her. Another contention put forward by the tenant was that the landlord is having another building in his possession and therefore, the first proviso to Section 11(3) is attracted, which would disentitle him from claiming eviction under Section 11(3).

4. Before the Rent Control Court, the landlord was examined as PW1 and the Commissioner who inspected the property and filed Ext.C1 report was examined as PW2. The tenant did not adduce any evidence. But, her son-in-law was examined as CPW1 and another witness was examined as CPW2. The Rent Control Court found that the need put forward by the landlord is bona fide and that he really needs the building to provide accommodation to his wife to conduct a business in Readymade Garments. The contention raised by the tenant that the bona fide need put forward by the landlord is a ruse to evict her and that the landlord was always demanding enhanced rate of rent at recurring intervals, was also negatived by the Rent Control Court. It is true that on the reverse of Exts.B1 and B2 rent receipts, endorsements are made by the landlord that the period of lease had come to an end and the tenant was liable to execute a fresh rent deed. The tenant has no case that at any point of time, accepting the request made by the landlord, she has executed any rent deed. The facts and circumstances would indicate that the tenant without demur agreed to pay the enhanced rent, as held by the Rent Control Court on the evidence adduced in the case. The Rent

Control Court also found that there are no grounds to doubt the genuineness of the need put forward by the landlord. There are three shop rooms comprised in the petition schedule building, namely, TC 416, 417 and 418. The contention of the landlord that if the separating walls are removed the premises can be conveniently put to use for conducting the business, was accepted by the Rent Control Court, on the basis of the evidence in the case. There is no case for the tenant that the wife of the landlord is engaged in any other business. There is also nothing in evidence to show that the wife of the landlord is incapable of conducting the business, even with the help of her children, as stated by the landlord.

5. As regard the protection claimed under the second proviso to Section 11(3) of the Act, the Rent Control Court found that the tenant is a retired teacher and widow of a retired Excise Commissioner. It is also not proved that the income derived from the conduct of the business in the petition schedule building is the main source of income of the tenant, so as to attract the first limb of the second proviso to Section 11(3) of the Act. Analysing the evidence on record, the Rent Control Court was inclined to take the view that the

tenant is not really conducting any business in the building. The non-examination of the tenant was also taken note of by the Rent Control Court. The Rent Control Court also found that the Commissioner's evidence as PW2 and the report submitted by him, namely, Ext.C1, would establish that there are other vacant rooms available in the locality to accommodate the business run by the tenant. Therefore, the 2nd limb of the 2nd proviso to Section 11(3) is also not satisfied. The contention that the tenant is depending for her livelihood mainly on the income derived from the business is to be proved by her and she has not adduced any evidence in that behalf. The evidence of her son-in-law is not sufficient to arrive at a conclusion in favour of the tenant, as rightly held by the Rent Control Court.

6. The tenant raised a contention that T.C.334 is owned by the wife of the landlord and therefore, the need put forward by the landlord in respect of the petition schedule building is not bona fide. It has come out in evidence and it was accepted by the Rent Control Court that T.C.334 is not a shop building but only a godown and that the said godown is rented out to a tenant. There is no evidence to establish that

the wife of the landlord is in possession of any vacant building, so as to accommodate the proposed business. On the evidence in this case, the Rent Control Court came to the conclusion that the need put forward by the landlord is genuine and it is not a ruse for eviction.

7. The appellate authority confirmed the findings of the Rent Control Court, after analysing the evidence and considering the documentary and oral evidence in the case. A contention was put forward by the appellant at the appellate stage that the need put forward no longer subsisted since the landlord gifted the petition schedule building to his son-in-law as per gift deed dated 10.3.2003. This contention was met by the landlord by the production of a cancellation deed dated 13.8.2003, in which the landlord as well as the donee, his son-in-law, are executants. We are of the view that the appellate authority, after considering this contention put forward by the tenant, has rightly held that the gift deed has not come into force and that as the donor and donee joined together and executed a cancellation deed, the contention of the tenant that the landlord has no title to the said building, is not acceptable.

8. When the donor and the donee jointly execute a cancellation deed and they accept the position that the gift deed has not come into force, the tenant cannot raise the contention that the gift deed was accepted and acted upon and that the donee became the owner of the property. The donee disowns ownership and agrees with the donor that the gift deed was a sham document. The tenant was not a party to the said document. It is true that she could contend that the landlord has no title to the property and therefore, the petition for eviction is liable to be dismissed. But, the donee having unequivocally stated that the gift deed has not come into effect and that he has not become the owner of the property and the landlord continued to be the owner of the property, the contention put forward by the tenant is not liable to be accepted.

9. We are of the view that the findings rendered by the courts below are reasonable and just and they do not warrant interference under Section 20 of the Rent Control Act. We do not find any ground to interfere with the concurrent findings of the courts below. In the result, the revision lacks merit and it is accordingly dismissed.

10. The learned counsel appearing for the revision petitioners contended that a reasonable time may be granted to the tenant to vacate the premises. It is pointed out that the tenant is a widow and that she is conducting a business in Aluminium Fabrication in the petition schedule building. Having regard to the facts and circumstances of the case and taking note of the fact that the tenant was paying enhanced rent periodically, it is only just and proper to grant six months' time to her to vacate the premises. We heard the learned counsel appearing for the landlord also on this point, who had filed a caveat in the case. In the facts and circumstances of the case, the tenant is granted six months' time to vacate the premises, on condition that she files an affidavit, undertaking to vacate the premises within six months. She shall also pay the arrears of rent and continue to pay the rent that accrues till the date of vacating the premises. The affidavit shall be filed before

the Rent Control Court within a period of three weeks from today. It is an admitted case that the landlord had received an interest free security deposit of Rs.25,000/-. This amount shall be repaid by the landlord to the tenant, after adjusting the arrears of rent till the date of surrender.

K. BALAKRISHNAN NAIR, JUDGE.

K.T.SANKARAN, JUDGE.

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